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**BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission

**COMMISSIONERS DOCKETED** 2009 JUN 12 P 2:07

KRISTIN K. MAYES, Chairman

GARY PIERCE

PAUL NEWMAN

SANDRA D. KENNEDY

BOB STUMP

DOCKETED BY



In the matter of:

KYLE SCHMIERER, individually and doing  
business as AMADIN, and JANE DOE  
SCHMIERER, husband and wife,

Respondents.

DOCKET NO. S-20651A-09-0029

**RESPONSE TO MOTION FOR  
RELEASE OF ESSENTIAL  
INFORMATION BEFORE  
MEDIATION****I. Procedural History**

On January 29, 2009, the Securities Division of the Arizona Corporation Commission ("Commission") filed a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing, ("TC&D") with respect to Respondent Kyle Schmierer.

On February 19, 2009, Respondent Kyle Schmierer filed a Request for Hearing.

On February 24, 2009, by Procedural Order, a pre-hearing conference was scheduled for March 23, 2009.

On February 26, 2009, Respondent Kyle Schmierer filed an Answer.

On March 23, 2009, the pre-hearing conference was held. Administrative Law Judge Stern recommended that the parties meet and discuss a resolution to this matter. Further, Judge Stern suggested that the matter be arbitrated or mediated. The parties were to file a motion to either set a hearing date or to set an arbitration/mediation date after meeting to discuss the issues.

On March 31, 2009, the Securities Division filed a Motion to Set Hearing. On April 2, 2009, Respondent filed a Motion to Set Mediation. A procedural conference was held on April 30, 2009. On May 19, 2009, the Third Procedural Order was issued. The Third Procedural Order scheduled a hearing to be held on August 31, 2009 and the exchange of witness and exhibit lists

1 on June 19, 2009. In addition, the Third Procedural Order also ordered that, within 14 days, the  
2 Respondent review the terms of the proposed consent and make a filing with the Commission  
3 which either indicates to the Securities Division whether he agrees with the terms of the Consent  
4 Order or that Respondent requests mediation or wishes to proceed with an evidentiary hearing as  
5 ordered.

6 On June 10, 2009, Respondent filed a Motion For Release of Essential Information  
7 Before Mediation.

## 8 **II. Response**

9 The Respondent's request is essentially a request for pre-hearing discovery. The  
10 Respondent is entitled to due process. He is not allowed free access to the Securities Division's  
11 investigative file. A.A.C. R14-3-104 reiterates a respondent's rights set forth in § 41-1061, by  
12 stating: "At a hearing a party shall be entitled to enter an appearance, to introduce evidence,  
13 examine and cross-examine witnesses, make arguments, and generally participate in the conduct of  
14 the proceeding." The Third Procedural Order sets forth the requirements for both parties to disclose  
15 their witness and exhibits list to the other party on June 19, 2009.

16 Other than the exchange of witness and exhibit lists, "[t]here is no basic constitutional right  
17 to pretrial discovery in administrative proceedings." *Silverman v. Commodity Futures Trading*  
18 *Commission*, 549 F.2d 28 (7<sup>th</sup> Cir. 1977). The Respondent will receive the Securities Division's  
19 witness and exhibit list approximately 75 days prior to the scheduled hearing.

## 20 **III. Conclusion**

21 The Temporary Cease and Desist Order sets forth the allegations against the Respondent.  
22 The witness and exhibit list will provide information about who will testify and what documents  
23 support the allegations in the Temporary Cease and Desist Order. The Respondent will have ample  
24 opportunity to review the exhibits to prepare for the upcoming hearing. The Respondent will have  
25 the opportunity to cross-examine the Securities Division's witnesses and examine his own  
26 witnesses. All necessary information will be provided on June 19, 2009 pursuant to the Third

1 Procedural Order. The Respondent is not entitled to the investigative file maintained by the  
2 Securities Division. Respondent's Motion for Release of Essential Information Before Mediation  
3 should be denied.

4 Respectfully submitted this 12<sup>th</sup> day of June, 2009.

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6 By: Wendy Coy  
7 Wendy Coy  
8 Senior Counsel for the Securities Division of  
9 the Arizona Corporation Commission  
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1 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing  
2 filed this 12<sup>th</sup> day of June, 2009 with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 W. Washington St.  
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered  
8 filed this 12<sup>th</sup> day of June, 2009 to:

9 Mr. Marc E. Stern  
10 Administrative Law Judge  
11 Arizona Corporation Commission/Hearing Division  
12 1200 W. Washington St.  
13 Phoenix, AZ 85007

14 COPY of the foregoing mailed  
15 this 12<sup>th</sup> day of June, 2009 to:

16 Kyle Schmierer  
17 220 West Behrend Dr.  
18 Phoenix, AZ 85027  
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